

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

MAY 24 2004

LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

LARRY WHISTLER
a/k/a LARRY ZBYSZKO
a/k/a THE LIVING LEGEND,
an individual,

Plaintiff,

v.

WORLD WRESTLING FEDERATION
ENTERTAINMENT, INC., a Connecticut
Corporation,

Defendant.

Civil Action
No. 1-02-CV-1008-CC

**BANKRUPTCY TRUSTEE'S MOTION FOR SUBSTITUTION AND MEMORANDUM OF
LAW IN SUPPORT THEREOF**

Bankruptcy Trustee, Edwin K. Palmer, by and through his attorney, Joel D. Myers, Myers & Kaplan, Intellectual Property Law, L.L.C., hereby files this motion for substitution as the plaintiff in interest in the above pending litigation against Defendant World Wrestling Federation Entertainment, Inc. ("WWE" or "Defendant").

Pursuant to Rule 25 of the Federal Rules of Civil Procedure, in case of any transfer of interest, the party to whom the interest is transferred may be substituted in the action. See Sinito v. U.S. Dept. of Justice, 176 F.3d 512,

69

516 (D.C. Cir. 1999) ("the purpose of the 1963 amendments to [FRCP] 25 ... was to liberalize the rule and to allow flexibility in substitution of parties"). On April 17, 2002, Larry Whistler, a/k/a Larry Zbyszko, a/k/a The Living Legend, ("Plaintiff Zbyszko") filed the present lawsuit against WWE, alleging, amongst other things, infringement and dilution of his trademark for "THE LIVING LEGEND." On January 3, 2003, approximately nine months after filing suit, Plaintiff Zbyszko filed a voluntary petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code. Therefore, pursuant to Eleventh Circuit case law, the trustee of the bankruptcy estate, i.e., Edwin K. Palmer (the "Trustee"), is the lawful owner of the trademark at issue in the present litigation, and should therefore be substituted in the action as the real party in interest. See Barger v. City of Cartersville, 348 F.3d 1289 (11th Cir. 2003) (citing Wieburg v. GTE Southwest Incorporated, 272 F.3d 302, 306 (5th Cir. 2001) ("a trustee is the real party in interest with exclusive standing to assert claims which are property of the bankruptcy estate"))).

Respectfully submitted this 24th day of May, 2004.

By: 

Joel D. Myers
Georgia Bar No. 533147
Counselors for Plaintiff

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CERTIFICATION

Pursuant to Local Rule 7.1D, counsel for Edwin K. Palmer hereby certifies that this Memorandum has been prepared with Courier New Font (12 point).

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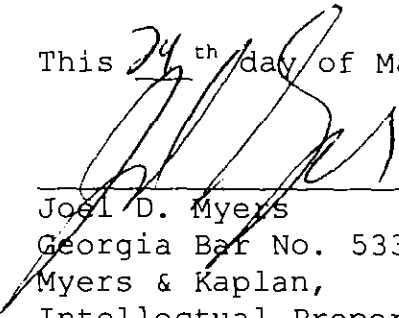
LARRY WHISTLER)	
a/k/a LARRY ZBYSZKO)	
a/k/a THE LIVING LEGEND,)	
an individual,)	
)	
Plaintiff,)	
)	Civil Action
)	No. 1-02-CV-1008-CC
v.)	
)	
WORLD WRESTLING FEDERATION)	
ENTERTAINMENT, INC., a Connecticut)	
Corporation,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

A copy of the BANKRUPTCY TRUSTEE'S MOTION FOR
SUBSTITUTION AND MEMORANDUM OF LAW IN SUPPORT THEREOF was
served by U.S. First Class Mail upon the following:

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Chorey, Taylor & Feil
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Fax (404) 841-3221

This 24th day of May, 2004.



Joel D. Myers

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